


South Carolina Legislature

4375 found 2 times. **H*4375**

Session 122 (2017-2018)

H*4375(Rat #0287) General Bill, By McCoy, Ott, Lucas, Anderson, Ballentine, Blackwell, Caskey, Crawford, Crosby, Davis, Finlay, Forrester, Gilliard, Hardee, Henegan, Hixon, Mack, Pope, Rutherford, J.E. Smith, Sandifer, Stavrinakis, Erickson, Huggins, W. Newton, Bales, Young, McEachern, Clary, Tallon, Brown, Fry, Robinson-Simpson, V.S. Moss, Clyburn, Martin, Magnuson, Bennett, Arrington, Daning, Weeks, Henderson and Govan

AN ACT TO AMEND SECTION 58-33-220, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS UNDER THE BASE LOAD REVIEW ACT, SO AS TO ADD CERTAIN DEFINITIONS; TO PROVIDE THAT THE PUBLIC SERVICE COMMISSION MUST NOT ACCEPT A BASE LOAD REVIEW APPLICATION, NOR MAY IT CONSIDER ANY REQUESTS MADE PURSUANT TO ARTICLE 4, CHAPTER 33, TITLE 58, OTHER THAN IN A DOCKET CURRENTLY PENDING BEFORE THE COMMISSION, AND TO PROVIDE THAT THE PROVISIONS OF ARTICLE 4, CHAPTER 33, TITLE 58 ARE REPEALED UPON THE CONCLUSION OF LITIGATION CONCERNING THE ABANDONMENT OF V.C. SUMMER UNITS 2 AND 3; BY ADDING CHAPTER 34 TO TITLE 58 SO AS TO PROVIDE FOR THE MANNER IN WHICH AND PROCEDURES UNDER WHICH ELECTRICITY RATES FOR CERTAIN RATEPAYERS WHO ARE PAYING ADDITIONAL CHARGES UNDER THE BASE LOAD REVIEW ACT FOR THE CONSTRUCTION OF NUCLEAR PLANTS OR PROJECTS SHALL BE REVISED AND DETERMINED, AND TO PROVIDE FOR PROCEDURES AND PROVISIONS OF LAW WHICH APPLY AND DO NOT APPLY IN REGARD TO THE ADJUSTMENT OF ELECTRICITY RATES AS PROVIDED BY CHAPTER 34; TO AMEND SECTION 58-33-280, RELATING TO REQUESTS FOR APPROVAL OF REVISED RATES UNDER THE BASE LOAD REVIEW ACT, SO AS TO DELETE THE REQUIREMENT THAT THE COMMISSION MUST GIVE SUBSTANTIAL WEIGHT TO AN AGREEMENT WHERE BOTH THE OFFICE OF REGULATORY STAFF AND THE UTILITY AGREE ON THE REVISED RATES AND INSTEAD PROVIDE IN THIS INSTANCE THAT THE COMMISSION MAY GIVE WEIGHT TO THE AGREEMENT IN ISSUING ITS REVISED RATES ORDER BUT MAY CONSIDER ADDITIONAL FACTORS AT ITS DISCRETION; TO AMEND SECTION 37-6-602, RELATING TO THE QUALIFICATIONS OF THE CONSUMER ADVOCATE WITHIN THE DEPARTMENT OF CONSUMER AFFAIRS, SO AS TO REVISE THESE QUALIFICATIONS; TO AMEND SECTION 37-6-604, RELATING TO THE FUNCTIONS AND DUTIES OF THE DIVISION OF CONSUMER ADVOCACY, SO AS TO DELETE A PROHIBITION AGAINST THE DIVISION REPRESENTING CONSUMERS IN UTILITY MATTERS, AND PERMIT THE CONSUMER ADVOCATE TO INTERVENE ON BEHALF OF CONSUMERS IN CERTAIN MATTERS BEFORE THE COMMISSION AND APPELLATE COURTS THAT AFFECT CONSUMERS; TO AMEND SECTION 37-6-607, RELATING TO PERMITTING THE CONSUMER ADVOCATE TO MAINTAIN ACTIONS FOR JUDICIAL REVIEW AND TO INTERVENE IN CIVIL PROCEEDINGS ON BEHALF OF CONSUMERS, SO AS TO DELETE LANGUAGE WHICH PROVIDES THAT THE ABOVE PROVISIONS DO NOT APPLY IN MATTERS ARISING UNDER TITLE 58 AFFECTING PUBLIC UTILITIES, SERVICES, AND CARRIERS; TO AMEND SECTION 58-4-10, RELATING TO THE OFFICE OF REGULATORY STAFF, SO AS TO FURTHER DEFINE THE TERM "PUBLIC INTEREST" IN REGARD TO THE OFFICE OF REGULATORY STAFF'S REPRESENTATION OF THE PUBLIC INTEREST BEFORE THE COMMISSION; TO AMEND SECTION 58-4-80, RELATING TO ACTIONS FOR JUDICIAL REVIEW OF ORDERS OF THE COMMISSION, SO AS TO PROVIDE THAT ON APPEAL, THE OFFICE OF REGULATORY STAFF DOES NOT REPRESENT THE COMMISSION; AND TO AMEND SECTION 58-4-55, RELATING TO THE PRODUCTION OF BOOKS, RECORDS, AND INFORMATION AS REQUIRED BY THE OFFICE OF REGULATORY STAFF, AND OTHER PROVISIONS RELATING TO NONCOMPLIANCE, INSPECTIONS, AUDITS, EXAMINATIONS, AND COSTS, SO AS TO REQUIRE SUCH PRODUCTION WITHOUT THE REQUIREMENT OF A CONFIDENTIALITY AGREEMENT OR PROTECTIVE ORDER, EXCEPT UNDER SPECIFIED CIRCUMSTANCES, TO PROVIDE WHEN SUCH INFORMATION MUST BE KEPT CONFIDENTIAL AND WHEN SUCH INFORMATION MAY BE

DISCLOSED, TO PROVIDE SPECIFIC PROCEDURES TO PROTECT CONFIDENTIALITY, AND TO ALLOW THE OFFICE OF REGULATORY STAFF TO APPLY IN CIRCUIT COURT FOR SUBPOENAS TO BE ISSUED TO ENTITIES OVER WHICH THE COMMISSION DOES NOT HAVE JURISDICTION.
- ratified title

11/09/17	House	Prefiled
11/09/17	House	Referred to Committee on Judiciary
01/09/18	House	Introduced and read first time (House Journal-page 86)
01/09/18	House	Referred to Committee on Judiciary (House Journal-page 86)
01/10/18	House	Member(s) request name added as sponsor: Martin, Magnuson, Bennett, Arrington
01/10/18	House	Committee report: Favorable with amendment Judiciary (House Journal-page 24)
01/11/18	House	Member(s) request name added as sponsor: Daning
01/11/18		Scrivener's error corrected
01/16/18	House	Debate adjourned until Wednesday, January 17, 2018
01/23/18	House	Member(s) request name added as sponsor: Weeks
01/24/18	House	Debate adjourned until Thur., 1-25-18 (House Journal-page 47)
01/25/18	House	Debate adjourned until Tues., 1-30-18 (House Journal-page 29)
01/25/18	House	Member(s) request name added as sponsor: Henderson
01/30/18	House	Debate adjourned until Wed., 1-31-18 (House Journal-page 14)
01/31/18	House	Member(s) request name added as sponsor: Govan
01/31/18	House	Amended (House Journal-page 10)
01/31/18	House	Read second time (House Journal-page 16)
01/31/18	House	Roll call Yeas-119 Nays-1 (House Journal-page 24)
02/01/18	House	Read third time and sent to Senate (House Journal-page 13)
02/01/18	House	Roll call Yeas-114 Nays-1 (House Journal-page 13)
02/01/18	Senate	Introduced and read first time (Senate Journal-page 4)
02/01/18	Senate	Referred to Committee on Judiciary (Senate Journal-page 4)
02/01/18		Scrivener's error corrected
02/20/18	Senate	Referred to Subcommittee: Rankin (ch), Hutto, Massey, McElveen, Sabb, Gambrell, Climer
05/01/18	Senate	Committee report: Favorable with amendment Judiciary (Senate Journal-page 13)
05/02/18		Scrivener's error corrected
05/08/18	Senate	Special order, set for May 8, 2018 (Senate Journal-page 83)
05/09/18	Senate	Committee Amendment Adopted (Senate Journal-page 149)
05/09/18	Senate	Amended (Senate Journal-page 149)
05/09/18	Senate	Read second time (Senate Journal-page 149)
05/10/18		Scrivener's error corrected
05/10/18	Senate	Amended (Senate Journal-page 160)
05/10/18	Senate	Read third time and returned to House with amendments (Senate Journal-page 160)
05/10/18	Senate	Roll call Ayes-43 Nays-0 (Senate Journal-page 160)
05/10/18	House	Senate amendment amended (House Journal-page 99)
05/10/18	House	Returned to Senate with amendments (House Journal-page 99)
05/10/18	Senate	Non-concurrence in House amendment (Senate Journal-page 172)
05/10/18	Senate	Conference committee appointed Setzler, Rankin, Massey (Senate Journal-page 174)
05/10/18	House	Conference committee appointed McCoy, Finlay,

Rutherford (House Journal-page 143)
 06/27/18 House Conference report received and adopted
 (House Journal-page 67)
 06/27/18 House Roll call Yeas-109 Nays-4 (House Journal-page 77)
 06/27/18 Senate Conference report received and adopted
 (Senate Journal-page 25)
 06/27/18 Senate Roll call Ayes-37 Nays-2 (Senate Journal-page 25)
 06/27/18 Senate Ordered enrolled for ratification
 (Senate Journal-page 39)
 06/28/18 Ratified R 287
 06/28/18 Vetoed by Governor
 06/28/18 House Veto overridden by originating body Yeas-110 Nays-1
 06/28/18 Senate Veto overridden Ayes-39 Nays-0
 (Senate Journal-page 58)

VERSIONS OF THIS BILL

11/9/2017
 1/10/2018
 1/11/2018
 1/31/2018
 2/1/2018
 5/1/2018
 5/2/2018
 5/9/2018
 5/10/2018
 5/10/2018-A
 5/10/2018-B
 5/10/2018-C
 6/27/2018

H. 4375

NOTE: THIS IS A TEMPORARY VERSION. THIS DOCUMENT WILL REMAIN IN THIS VERSION UNTIL FINAL APPROVAL BY THE LEGISLATIVE COUNCIL.

(R287, H4375)

AN ACT TO AMEND SECTION 58-33-220, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS UNDER THE BASE LOAD REVIEW ACT, SO AS TO ADD CERTAIN DEFINITIONS; TO PROVIDE THAT THE PUBLIC SERVICE COMMISSION MUST NOT ACCEPT A BASE LOAD REVIEW APPLICATION, NOR MAY IT CONSIDER ANY REQUESTS MADE PURSUANT TO ARTICLE 4, CHAPTER 33, TITLE 58, OTHER THAN IN A DOCKET CURRENTLY PENDING BEFORE THE COMMISSION, AND TO PROVIDE THAT THE PROVISIONS OF ARTICLE 4, CHAPTER 33, TITLE 58 ARE REPEALED UPON THE CONCLUSION OF LITIGATION CONCERNING THE ABANDONMENT OF V.C. SUMMER UNITS 2 AND 3; BY ADDING CHAPTER 34 TO TITLE 58 SO AS TO PROVIDE FOR THE MANNER IN WHICH AND PROCEDURES UNDER WHICH ELECTRICITY RATES FOR CERTAIN RATEPAYERS WHO ARE PAYING ADDITIONAL CHARGES UNDER THE BASE LOAD REVIEW ACT FOR THE CONSTRUCTION OF NUCLEAR PLANTS OR PROJECTS SHALL BE REVISED AND DETERMINED, AND TO PROVIDE FOR PROCEDURES AND PROVISIONS OF LAW WHICH APPLY AND DO NOT APPLY IN REGARD TO THE ADJUSTMENT OF ELECTRICITY RATES AS PROVIDED BY CHAPTER 34; TO AMEND SECTION 58-33-280, RELATING TO REQUESTS FOR APPROVAL OF REVISED RATES UNDER THE BASE LOAD REVIEW ACT, SO AS TO DELETE THE REQUIREMENT THAT THE COMMISSION MUST GIVE SUBSTANTIAL WEIGHT TO AN AGREEMENT WHERE BOTH THE OFFICE OF REGULATORY STAFF AND THE UTILITY AGREE ON THE REVISED RATES AND INSTEAD PROVIDE IN THIS INSTANCE THAT THE COMMISSION MAY GIVE WEIGHT TO THE

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Be it enacted by the General Assembly of the State of South Carolina:

Definitions added

SECTION 1. Section 58-33-220 of the 1976 Code is amended by adding appropriately numbered items to read:

"() 'Imprudent' or 'imprudence' includes, but is not limited to, lack of caution, care, or diligence as determined by the commission in regard to any action or decision taken by the utility or one acting on its behalf including, but not limited to, its officers, board, agents, employees, contractors, subcontractors, consultants affecting the project, or any other person acting on behalf of or for the utility affecting the project. Imprudent or imprudence includes, but does not require, a finding of negligence, carelessness, or recklessness.

Imprudence on behalf of any contractor, subcontractor, agent, or person hired to construct a plant or perform any action or service on behalf of the utility shall be attributed to the utility.

() 'Prudent', 'prudence', or 'prudency' means a high standard of caution, care, and diligence in regard to any action or decision taken by the utility or one acting on its behalf including, but not limited to, its officers, board, agents, employees, contractors, subcontractors, consultants affecting the project, or any other person acting on behalf of or for the utility affecting the project.

To the extent a utility enters a contract with a third party that delegates some or all decision-making authority related to the project, the utility retains the burden of establishing the prudence of specific items or cost or specific third-party decisions.

'Prudent', 'prudence', or 'prudency' also requires that any action or decision be made in a timely manner.

In determining whether any action or decision was prudent, the commission shall consider, including, but not limited to:

- (a) whether the utility acts in a timely manner, with any passage of time which results in increased costs or expense prior to the utility acting or making the decision weighing against a finding of prudence;
- (b) whether prior actions or decisions by the utility were imprudent and such imprudent actions led to a decision by the utility that could otherwise be prudent. Such circumstances weigh against a finding of prudence; and
- (c) any other relevant factors, including commission of a fraudulent act, which are deemed not to be prudent.

As used in item (c), 'fraud' includes, in addition to its normal legal connotation, concealment, omission, misrepresentation, or nondisclosure of a material fact in any proceeding or filing before the commission or Office of Regulatory Staff. Proceedings and filings to which the provisions of this paragraph apply include, but are not limited to, rate or revised rate filings, responsive filings, motions, pleadings, briefs, memoranda, document requests, and other communications before the commission or Office of Regulatory Staff."

Consideration limited, repeal

SECTION 2. A. As of the effective date of this act, the Public Service Commission must not accept a base load review application, nor may it consider any requests made pursuant to Article 4, Chapter 33, Title 58 other than in a docket currently pending before the Commission.

B. The provisions of Article 4, Chapter 33, Title 58 are repealed upon the conclusion of litigation concerning the abandonment of V.C. Summer Units 2 and 3.

Determination of certain electric rates

SECTION 3. Title 58 of the 1976 Code is amended by adding:

"CHAPTER 34

Determination of Electricity Rates

Section 58-34-10. (A) The investor-owned utility holding the majority interest in the V. C. Summer Nuclear Reactor Units 2 and 3 at Jenkinsville, South Carolina, has entered into a merger agreement with an out-of-state investor-owned utility. This merger agreement contemplates the continuation of rate increases imposed under the Base Load Review Act contained in Article 4, Chapter 33, Title 58.

(B) Pursuant to the authority vested in the General Assembly by Section 1, Article IX of the Constitution of this State, the General Assembly is required to regulate investor-owned utilities in order to protect the public interest. The General Assembly has determined that Section 1, Article IX of the Constitution requires that the General Assembly exercise its authority to set certain utility rates for the purpose of protecting the public interest until a determination can be made by the appropriate regulatory and judicial authorities. This rate shall apply to all customers of the investor-owned utility identified in subsection (A), which has imposed nine rate increases for the purpose of funding the V. C. Summer project.

Section 58-34-20. Within five calendar days after the effective date of this chapter, the Public Service Commission, by order, is directed to exercise its authority pursuant to Section 58-27-870(F) to provide an experimental rate that customers of the utility identified in Section 58-34-10 shall pay during the pendency of litigation currently before the commission which shall include full and final compliance by the utility with the order issued by the Public Service Commission under this section or until replaced by an order of the commission under Section 58-34-30. This experimental rate shall cause rates to be reduced on a going forward basis in an amount equal to the electric utility rates these ratepayers are paying reduced by the following rate increases imposed under the provisions of the Base Load Review Act in the Public Service Commission's orders Docket No. 2011-207-E, Order No. 2011-738, Docket No. 2012-186-E, Order No. 2012-761, Docket No. 2013-150-E, Order No. 2013-680(A), Docket No. 2014-187-E, Order No. 2014-785, Docket No. 2015-160-E, Order No. 2015-712, Docket No. 2016-224-E, Order No. 2016-758, for the period of no earlier than April 1, 2018, until the issuance of the Public Service Commission's final order on the merits on the matters before the commission.

Section 58-34-30. Notwithstanding any other provision of law, the experimental rate set pursuant to Section 58-34-20 shall remain in full force and effect during the pendency of the matters before the commission. However, the commission shall monitor the net effect of the experimental rate and may alter the experimental rate, on its own motion, only if it determines that an adjustment to the experimental rate is necessary to satisfy constitutional requirements of utility ratemaking. If required to adjust the rate, the commission shall, under applicable provisions of law, determine the just and reasonable rates for these ratepayers after considering all factors and evidence. In determining such rate and in considering the constitutionally allowable zone of reasonableness in which rates may properly fall, the commission is directed to set the lowest possible rate within the zone of reasonableness. Nothing herein prevents the commission from adopting as its own rate the experimental rate directed by the General Assembly in Section 58-34-10 and ordered pursuant to Section 58-34-20.

Section 58-34-40. Any provision of Article 7, Chapter 27, Title 58 in conflict with the provisions of this chapter, including, but not limited to, Section 58-27-870(B), are suspended for purposes of the utility rates provided for by this chapter and for any pending matters related to V.C. Summer Nuclear Reactor Units 2 and 3 at Jenkinsville, South Carolina, pending before the commission on or after the effective date of this chapter. The suspension remains in effect during the pendency of any litigation or appeal concerning the experimental or interim rates directed by the General Assembly or ordered by the Public Service Commission pursuant to this chapter, or related issues surrounding the establishment of these rates, until a final determination of the matter, including any subsequent appeals, is made by the appropriate court.

Section 58-34-50. Section 58-27-930 and the time limitations contained in Section 58-33-240(A) and (E) are hereby suspended for purposes of the utility rates provided for by this chapter and for any pending matters related to V.C. Summer Nuclear Reactor Units 2 and 3 at Jenkinsville, South Carolina, pending before the commission on or after the effective date of this chapter. The suspension remains in effect during the pendency of any litigation or appeal concerning the experimental or interim rates directed by the General Assembly or ordered by the Public Service Commission pursuant to this chapter, or related issues surrounding the establishment of these rates, until a final determination of the matter, including any subsequent appeals, is made by the appropriate court."

Weight to be given agreement

SECTION 4. Section 58-33-280(G) of the 1976 Code is amended to read:

"(G) Where both Office of Regulatory Staff and the utility agree in writing on the revised rates to be implemented, the commission may give weight to the agreement in issuing its revised rates order but may consider additional factors at its discretion."

Qualifications revised

SECTION 5. Section 37-6-602 of the 1976 Code is amended to read:

"Section 37-6-602. The Consumer Advocate may be the Administrator of Consumer Affairs or he may be appointed by the administrator with the approval of the Commission on Consumer Affairs. The Consumer Advocate must be an attorney qualified to practice in all courts of this State with a minimum of eight years' practice experience."

Intervention on behalf of consumers

SECTION 6. Section 37-6-604 of the 1976 Code is amended to read:

"Section 37-6-604. (A) The functions and duties of the Division of Consumer Advocacy are:

(1) to provide legal representation of the consumer interest before the state and federal regulatory agencies which undertake to fix rates or prices for consumer products or services or to enact regulations or establish policies related thereto and to provide legal representation of the consumer interest concerning insurance matters, certificates of need for health facilities and services as required for an activity under Section 44-7-160, and other health-related provisions;

(2) to monitor existing regulations, rate structures, and policies of that agency of special interest to consumers and report to the public through the news media proposed changes therein under consideration and the effect of those changes on the lives of the citizens of the State; and

(3) to evaluate and act upon requests from consumers concerning the matters set forth in items (1) and (2), except that any proceedings initiated by the Consumer Advocate must be brought on behalf of the public at large and not for individuals; initiation or continuation of any proceedings is in the sole discretion of the Consumer Advocate.

(B) The annual report required of the Commission on Consumer Affairs must include a report on the activities of the Division of Consumer Advocacy.

(C) The Consumer Advocate shall be provided notice of any matter filed at the Public Service Commission that could impact consumers' utility rates, and may intervene as a party to advocate for the interest of consumers before the Public Service Commission and appellate courts in such matters as the Consumer Advocate deems necessary and appropriate."

Utility exception deleted

SECTION 7. Section 37-6-607 of the 1976 Code is amended to read:

"Section 37-6-607. The Consumer Advocate is considered to have an interest sufficient to maintain actions for judicial review and may, as of right and in the manner prescribed by law, intervene or otherwise participate in any civil proceeding which involves the review or enforcement of an agency action that the Consumer Advocate determines may substantially affect the interests of consumers."

Public interest definition revised

SECTION 8. Section 58-4-10 of the 1976 Code is amended to read:

"Section 58-4-10. (A) There is hereby created the Office of Regulatory Staff as a separate agency of the State with the duties and organizations as hereinafter provided.

(B) Unless and until it chooses not to participate, the Office of Regulatory Staff must be considered a party of record in all filings, applications, or proceedings before the commission. The regulatory staff must represent the public interest of South Carolina before the commission. For purposes of this chapter, 'public interest' means the concerns of the using and consuming public with respect to public utility services, regardless of the class of customer and preservation of continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services.

(C) The Office of Regulatory Staff is subject to the provision of Section 58-3-260 prohibiting ex parte communications with the commission, and any advice given to the commission by the regulatory staff must be given in a form, forum, and manner as may lawfully be given by any other party or person."

Representation on appeal

SECTION 9. Section 58-4-80 of the 1976 Code is amended to read:

"Section 58-4-80. The executive director representing the regulatory staff is considered to have an interest sufficient to maintain actions for judicial review from commission orders or decisions and may, as of right and in a manner prescribed by law, intervene or otherwise participate in any civil proceeding which involves the review or enforcement of commission action that the executive director determines may substantially affect the public interest. This right includes intervention in any action for judicial review from commission orders or decisions that are pending at any stage of the action. The executive director representing the regulatory staff has the same rights of appeal from commission orders or decisions as other parties to commission proceedings. On appeal, the Office of Regulatory Staff does not represent the commission."

Confidentiality requirements, exceptions, procedures, and subpoena authority

SECTION 10. Section 58-4-55 of the 1976 Code is amended to read:

"Section 58-4-55. (A) The regulatory staff, in accomplishing its responsibilities under Section 58-4-50, may require the production of books, records, and other information to be produced at the regulatory staff's office, that, upon request of the regulatory staff, must be submitted under oath and without the requirement of a confidentiality agreement or protective order being first executed or sought. The regulatory staff must treat the information as confidential or proprietary unless or until the commission rules such information is not entitled to protection from public disclosure or the public utility agrees that such information is no longer confidential or proprietary. Unless the commission's order contains a finding to the contrary, all documents or information designated as confidential or proprietary pursuant to this subsection are exempt from public disclosure under Sections 30-4-10, et seq. and the regulatory staff shall not disclose such documents and information, or the contents thereof, to any member of the commission or to any other person or entity; provided, however, that, if the commission determines that it is necessary to view such documents or information, it shall order the regulatory staff to file the documents or information with the commission under seal, and such documents or information shall not be available for public inspection unless otherwise ordered by the commission.

If the books, records, or other information provided do not appear to disclose full and accurate information and, if such apparent deficiencies are not cured after reasonable notice, the regulatory staff may require the attendance and testimony under oath of the officers, accountants, or other agents of the parties having knowledge thereof at such place as the regulatory staff may designate and the expense of making the necessary examination or inspection for the procuring of the information must be paid by the party examined or inspected, to be collected by the regulatory staff by suit or action, if necessary. If, however, the examination and inspection and the reports thereof disclose that full and accurate information had previously been made, the expense of making the examination and inspection must be paid out of the funds of the regulatory staff.

(B) If the regulatory staff initiates an inspection, audit, or examination of a public utility, the public utility that is the subject of the inspection, audit, or examination may petition the commission to terminate or limit the scope of such inspection, audit, or examination. The commission must grant such petition if it finds that such inspection, audit, or examination is arbitrary, capricious, unnecessary, unduly burdensome, or unrelated to the public utility's regulated operations.

(1) If such an inspection, audit, or examination is not part of a contested case proceeding, the public utility may also raise objections or seek relief available under the South Carolina Rules of Civil Procedure to a party upon whom discovery is served or to a person upon whom a subpoena is served. The commission shall provide the regulatory staff reasonable notice to respond to any such objection or request. Absent the consent of the public utility raising such an objection or request and the Office of Regulatory Staff, the commission must rule on such an objection or request within sixty days of the date it was filed. During the pendency of the commission's ruling, the public utility making such an objection or request is not required to produce or provide access to any documents or information that is the subject of the objection or request.

(2) If such an inspection, audit, or examination is part of a contested case proceeding, the commission shall address objections to information sought by the regulatory staff in the same manner in which it addresses objections to discovery issued by the parties to the contested case proceeding.

(C) Any public utility that provides the regulatory staff with copies of or access to documents or information in the course of an inspection, audit, or examination that is not part of a contested case proceeding may designate any such documents or information as confidential or proprietary if it believes in good faith that such documents or information would be entitled to protection from public disclosure under the South Carolina Rules of Civil Procedure or any provision of South Carolina or federal law. The regulatory staff may petition the commission for an order that some or all of the documents so designated are not entitled to protection from public disclosure and it shall be incumbent on the utility to prove that such documents are entitled to protection from public disclosure under the South Carolina Rules of Civil Procedure or any provision of South Carolina or federal law. The commission shall rule on such petition after providing the regulatory staff and the utility an opportunity to be heard. Unless the commission's order on such a petition contains a finding to the contrary, all documents or information designated as confidential or proprietary pursuant to this subsection are exempt from public disclosure under Sections 30-

4-10, et seq. and the regulatory staff shall not disclose such documents and information, or the contents thereof, to any member of the commission or to any other person or entity; provided, however, that, if the commission determines that it is necessary to view such documents or information in order to rule on such a petition, it shall order the regulatory staff to file the documents or information with the commission under seal, and such documents or information shall not be available for public inspection during the pendency of the petition.

(D) Nothing in this section restricts the regulatory staff's ability to serve discovery in a contested case proceeding that seeks the type of documents or information the regulatory staff has obtained in the course of any review, investigation, inspection, audit, or examination, nor does anything in this section restrict the ability of any public utility to object to such discovery or to seek relief regarding such discovery, including without limitation, the entry of a protective order. The regulatory staff shall not be required to execute a confidentiality agreement or seek a protective order prior to accessing the public utility's documents or information, and such information or documents shall be treated as confidential or proprietary unless or until the commission rules such information is not entitled to protection from public disclosure or the public utility agrees that such information is no longer confidential or proprietary. Unless the commission's order contains a finding to the contrary, all documents or information designated as confidential or proprietary pursuant to this subsection are exempt from public disclosure under Sections 30-4-10, et seq. and the regulatory staff shall not disclose such documents and information, or the contents thereof, to any member of the commission or to any other person or entity; provided, however, that, if the commission determines that it is necessary to view such documents or information, it shall order the regulatory staff to file the documents or information with the commission under seal, and such documents or information shall not be available for public inspection unless otherwise ordered by the commission.

(E) The Office of Regulatory Staff, in order to accomplish any of the responsibilities assigned to it by Chapter 4, Title 58 or any other provision of law, may apply to the circuit court for subpoenas to be issued to entities over which the Public Service Commission does not have jurisdiction. Such subpoenas will be issued by the circuit court in the same manner as subpoenas are issued to parties to proceedings before that court, and all rules applicable to the issuance of such subpoenas, including enforcement and penalties, shall apply to subpoenas issued at the request of the regulatory staff."

Severability

SECTION 11. If any provision of this act is enjoined, held, or determined to be unconstitutional, invalid, or otherwise unenforceable by a court of competent jurisdiction, it is the intention of the General Assembly that the provision is severable from the remaining provisions of this act and that the injunction or holding does not invalidate or render unenforceable another provision of this act.

Time effective

SECTION 12. This act takes effect upon approval by the Governor and applies to all cases, proceedings, petitions, or matters pending before the Public Service Commission or in any other court or venue on or after the effective date of this act.

Ratified the 28th day of June, 2018.

President of the Senate

Speaker of the House of Representatives

Approved the _____ day of _____ 2018.

Governor

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Legislative Services Agency
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